

ASSEMBLY BILL

No. 2212

Introduced by Assembly Member Fuentes

February 18, 2010

An act to add Section 709 to the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 2212, as introduced, Fuentes. Minors: mental competency.

Existing statutory law, in counties that agree to be subject to these provisions pursuant to a resolution adopted by the board of supervisors, provides that when it appears to the court, or upon request of the prosecutor or counsel, that a minor who is alleged to come within the jurisdiction of the juvenile court as a person who is or may be found to be a ward of the juvenile court may have a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability, the court may order that the minor be referred for evaluation by a licensed mental health professional.

Existing court rules provide that if the court finds that there is reason to doubt that a child who is the subject of a petition to declare the child a ward of the juvenile court is capable of understanding the proceedings or of cooperating with the child's attorney, the court is required to stay the proceedings and conduct a hearing regarding the child's competence. If the court believes that a child who comes within that description is mentally disabled or may be mentally ill, the court may stay the proceedings and order that the child be taken to a facility for an evaluation, as specified.

This bill would provide, with respect to a minor who is alleged to come within the jurisdiction of the juvenile court as a person who is or

may be found to be a ward of the juvenile court, that if, during the pendency of any action prior to adjudication, a doubt is expressed that the minor who is the subject of the action does not have the sufficient present ability to rationally and factually understand the nature of the proceedings against him or her or assist his or her attorney in his or her defense, the court shall declare a doubt as to the minor's competency and suspend the proceedings. The bill would require, upon declaration of a doubt as to the minor's competency, the court to order that the question of the minor's competence be determined in a hearing, as specified. The bill would require the court to appoint an expert in the field of juvenile adjudicative competency to evaluate whether the minor suffers from a mental disorder, developmental disability, or developmental immaturity and, if so, whether the condition impairs the minor's competency. The bill would require that, if the minor is found to be incompetent by a preponderance of the evidence, all proceedings remain suspended until the minor becomes competent or the court no longer retains jurisdiction.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 709 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 709. (a) If, during the pendency of any action prior to
- 4 adjudication, a doubt is expressed that the minor who is the subject
- 5 of that action does not have the sufficient present ability to
- 6 rationally and factually understand the nature of the proceedings
- 7 against him or her or assist his or her attorney in his or her defense,
- 8 the court shall declare a doubt as to the minor's competency and
- 9 suspend the proceedings.
- 10 (b) Upon declaration of a doubt as to the minor's competency,
- 11 the court shall order that the question of the minor's competence
- 12 is to be determined in a hearing. The court shall appoint an expert
- 13 in the field of juvenile adjudicative competency to evaluate whether
- 14 the minor suffers from a mental disorder, developmental disability,
- 15 or developmental immaturity, and, if so, whether the condition or
- 16 conditions impair the minor's competency.
- 17 (c) If the minor is found to be incompetent by a preponderance
- 18 of the evidence, all proceedings shall remain suspended until the

- 1 minor becomes competent or the court no longer retains
2 jurisdiction.
- 3 (d) If the minor is found to be competent, the court may proceed
4 commensurate with the court's jurisdiction.
- 5 (e) This section applies to a minor who is alleged to come within
6 the jurisdiction of the court pursuant to Section 601 or 602.

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